

UNITED STATES  
ENVIRONMENTAL PROTECTION AGENCY  
REGION 7  
901 N. 5<sup>th</sup> STREET  
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION  
AGENCY-REGION VII  
REGIONAL HEARING CLERK

In the Matter of

HARRY PULLIAM AND CINDY PULLIAM  
d/b/a HMC ENTERPRISES  
Wilber, Nebraska

Respondents

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Docket No. TSCA-07-2003-0320

CONSENT AGREEMENT AND FINAL ORDER

Introduction

Prior to the filing of a complaint in this matter, the parties have agreed to the settlement of an administrative cause of action for the assessment of civil penalties under Section 16(a) of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2615(a), in accordance with the United States Environmental Protection Agency's Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits, found at 40 C.F.R. Part 22. Pursuant to 40 C.F.R. § 22.13(b), it is the intent of the parties to simultaneously commence and conclude this proceeding by the issuance of this Consent Agreement and Final Order.

The Complainant, by delegation from the Administrator of the United States Environmental Protection Agency (EPA), and the Regional Administrator, EPA, Region 7, is the Director, Air, RCRA, and Toxics Division, EPA, Region 7. The Respondents are Harry Pulliam and Cindy Pulliam, 615 West 6<sup>th</sup> Street, Wilber, Nebraska 68465.

Complainant's Allegations

Complainant has reason to believe that Respondents have violated Section 409 of TSCA, 15 U.S.C. § 2689, by failing to comply with the regulatory requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule"), which was promulgated pursuant to Section 1018 of the Residential Lead-Based Paint Hazard Reduction Act of 1992, 42 U.S.C. § 4852d. Specifically, Complainant alleges:

Count 1

1. Harry Pulliam and Cindy Pulliam ("Respondents") are individual persons.
2. Respondents do business as HMC Enterprises.
3. For all periods of time relevant to the violation alleged herein, Harry Pulliam and Cindy Pulliam owned a residential property located at 409 Lancaster, Dewitt, Nebraska (the "Property").
4. The Property was constructed prior to 1978.
5. The Property is "target housing" as defined by 40 C.F.R. § 745.103.
6. On or around December 4, 2002, Respondents entered into a rental agreement (the "Contract") with John and Samantha Prokop for the lease of Respondents' Property for residential use.
7. As a result of the Contract described in Paragraph 6 above, Harry Pulliam and Cindy Pulliam became the "lessors" and John and Samantha Prokop became the "lessees," as those terms are defined by 40 C.F.R. § 745.103.
8. John and Samantha Prokop subsequently moved into the Property along with two children, ages two and three years old.
9. Pursuant to 40 C.F.R. § 745.107(a)(1), before the lessee is obligated under any contract to lease target housing, the lessor of target housing must provide the lessee with an EPA-approved lead hazard information pamphlet.

10. Respondents did not provide an EPA-approved lead hazard information pamphlet to John and Samantha Prokop prior to being obligated under the rental Contract described in Paragraph 6 above.

11. Respondents' failure to provide an EPA-approved lead hazard information pamphlet to John and Samantha Prokop prior to being obligated under the rental Contract described in Paragraph 6 above is a violation of 40 C.F.R. § 745.107(a)(1) and Section 409 of TSCA.

#### CONSENT AGREEMENT

1. For the purposes of this proceeding, Respondents admit that Complainant has jurisdiction to bring this action pursuant to the statutory and regulatory provisions cited above, and neither admit nor deny Complainant's factual allegations above.

2. Respondents waive their right to contest Complainant's allegations above, and their right to appeal the Final Order accompanying this Consent Agreement.

3. Respondents and Complainant agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorneys' fees.

4. Respondents certify by the signing of this Consent Agreement and Final Order that to the best of Respondents' knowledge, they are presently in compliance with all requirements of 40 C.F.R. Part 745, Subpart F - Disclosure of Known Lead-Based Paint and/or Lead-Based Paint Hazards Upon Sale or Lease of Residential Property ("Disclosure Rule").

5. Respondents consent to the issuance of the Final Order hereinafter recited and consent to the payment of a civil penalty in the amount of One Thousand Two Hundred Dollars (\$1,200) to be paid within forty-five (45) days of the effective date of the Final Order.

6. Respondents understand that their failure to timely pay any portion of the penalty stated in Paragraph 5 above may result in the commencement of a civil action in Federal District Court to recover the full remaining balance, along with penalties and accumulated interest. In such case,

interest shall accrue thereon at the rate determined by the Secretary of the Treasury (currently two percent (2%) per annum for the period January 1, 2003, through December 31, 2003) on the unpaid balance until such civil penalty and any accrued interest are paid in full. Additionally, as provided by 31 U.S.C. § 3717(e)(2), a six percent (6%) per annum penalty (late charge) may be assessed on any amount not paid within ninety (90) days of the due date.

Final Order

Pursuant to the provisions of the Toxic Substances Control Act (TSCA), 15 U.S.C. § 2601 *et seq.*, and based upon the information set forth in the Consent Agreement accompanying this Final Order, IT IS HEREBY ORDERED THAT:

1. Respondents shall pay a civil penalty of One Thousand Two Hundred Dollars (\$1,200) due within forty-five (45) days of the effective date of the Final Order. Such payment shall identify the Respondents by name and docket number and shall be by certified or cashier's check made payable to the "United States Treasury" and remitted to:

EPA-Region 7  
c/o Mellon Bank  
P.O. Box 360748M  
Pittsburgh, Pennsylvania 15251.

2. A copy of the check must be sent simultaneously to each of the following:

Regional Hearing Clerk  
U.S. Environmental Protection Agency  
Region 7  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101; and

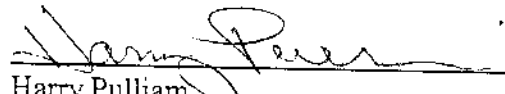
Deanna Smith  
Office of Regional Counsel  
U.S. Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101.

3. Respondents and Complainant shall bear their own costs and attorneys' fees incurred as a result of this matter.

RESPONDENTS:  
HARRY PULLIAM AND CINDY PULLIAM  
WILBER, NEBRASKA

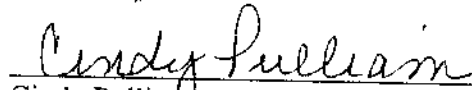
Date 9-9-03

By

  
Harry Pulliam

Date 9-9-03

By

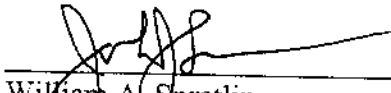
  
Cindy Pulliam

COMPLAINANT:  
U.S. ENVIRONMENTAL PROTECTION AGENCY

Date

9/26/03


By

  
for William A. Spratlin  
Director  
Air, RCRA, and Toxics Division

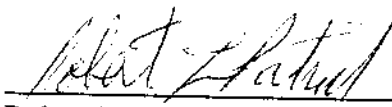
Date

9/29/03

By

  
Becky Ingrum Dolph  
Deputy Regional Counsel

IT IS SO ORDERED. This Final Order shall become effective immediately.

  
Robert L. Patrick  
Regional Judicial Officer

Date

Sept. 30, 2003

IN THE MATTER OF Harry Pulliam and Cindy Pulliam d/b/a HMC Enterprises, Respondents  
Docket No. TSCA-07-2003-0320

CERTIFICATE OF SERVICE

I certify that the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:


Copy hand delivered to  
Attorney for Complainant:

Becky Ingrum Dolph  
Deputy Regional Counsel  
Regulatory Programs  
Office of Regional Counsel  
Region VII  
United States Environmental Protection Agency  
901 N. 5<sup>th</sup> Street  
Kansas City, Kansas 66101

Copy by U.S. Certified Mail,  
Return Receipt Requested, to:

HMC Enterprises  
Harry Pulliam and/or  
Cindy Pulliam  
615 West 6<sup>th</sup> Street  
Wilber, Nebraska 68465

Dated: 10/1/03

  
Kathy Robinson  
Regional Hearing Clerk